Bay Corrugated Container, Inc. *and* Amalgamated Clothing and Textile Workers Union, Chicago and Central States Joint Board, AFL–CIO–CLC. Cases 7–CA–31177, 7–CA–31342, and 7–CA–31584

February 16, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 31, 1992, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a brief in support,[1] and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

For the reasons stated below, we agree with the judge that the Respondent violated Section 8(a)(3) and (1) of the Act when it discharged employees Don Moyur, Rick Bartee, and Adam Gibson on October 24, 1990.[4]

In early September, employee Rick Bartee met with a union representative to discuss the representation of the Respondent's employees. Between that time and October 24, Bartee held several employee meetings at his home and visited the homes of about 50 employees to solicit their support for the Union. Bartee also passed out union literature at the gate of the Respondent's facility, in full view of management, approximately five times prior to October 24.

Employee Don Moyur was also active in the union organizing drive. He visited employees' homes to discuss the Union, passed out union cards, handbilled at the front gate, and placed union literature on tables in the cafeteria. After handbilling at the front gate on October 15, Moyur was met by Vice President of Data Processing John Reuther, Personnel Director Rich Williams and Executive Vice President Dick Tangeman as he entered the plant. Reuther asked Moyur ''how everything was going at the gate.''

On October 10, Tangeman met with the press department employees to discuss the union organizing drive. During this meeting, Tangeman stated that he had heard rumors that there was a union meeting that day at 4:30 p.m. and that he knew where it was.[5] Tangeman stared at Bartee while making this statement. In fact, a union meeting was held that evening at Bartee's[6] home.

On October 19, Assistant Plant Manager Randy McKinney approached Moyur and Bartee at the ward press machine. Moyur asked McKinney what kind of guarantees Moyur would have to keep his job if he signed a union card. McKinney replied ''You guys do what you gotta do, we'll do what we gotta do. But we'll get you guys.''[7]

About a week prior to October 24, employee Adam Gibson met with Plant Manager Chuck Reuther regarding a problem between Gibson and Bartee. During this meeting, Reuther told Gibson that Bartee was the one heading the union organizing drive, that Reuther could not understand why Bartee was doing this because the company had done so much for him, and that Reuther could not understand why Bartee was carrying this out. Reuther added that ''Rick was kind of walking a thin line with his job, starting all this Union stuff.''

On October 23, Bartee, Moyur, and Gibson were assigned to run an order for Digitron Packaging on the ward press machine. The order consisted of printing the Ford logo and legal phrases on about 5500 pieces. Chuck Reuther ordered Gibson to rush the order and

[1] The General Counsel contends that the Respondent's exceptions and brief in support should be stricken because they do not comply with Sec. 102.46(b) and (c) of the Board's Rules and Regulations, which provide, in relevant part, that the exceptions and brief shall specifically refer to the questions of procedure, fact, law, or policy to which exception is taken. The General Counsel argues that the Respondent's exceptions and brief in support do not specify which factual findings allegedly render the judge's conclusions invalid. We find that the Respondent's exceptions and brief in support substantially conform with the pertinent sections of the Board's Rules and Regulations, and we therefore deny the General Counsel's motion to strike.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following errors in the judge's decision: in sec. III,F, par. 39, the judge states that Quality Control Manager Kris Eggleston testified that the press machine may be shut down by pressing a button, when it was Assistant Plant Manager Randy McKinney who so testified; and in sec. III,F, par. 43, of the decision, we note that the correct cite for Adam Gibson's application for unemployment insurance is ''Employer's Ex. 13.''

[3] We will modify the judge's recommended Order to require the Respondent to notify the Regional Director in writing within 20 days from the date of the Order what steps it has taken to comply, and to remove from its files any reference to the unlawful demotion and discharges.

[4] All dates are in 1990 unless otherwise indicated.

[5] We adopt the judge's finding that the Respondent, through Tangeman, violated Sec. 8(a)(1) by creating the impression among employees that their union activities were under surveillance. In so finding, we note that the judge, in sec. III,D, par. 1, of his decision, incorrectly stated that Tangeman did not specifically deny telling employees that he knew about the union meeting when, in fact, Tangeman did deny making this statement.

[6] The judge inadvertently stated in sec. III,D, par. 3, of his decision that the union meeting was held at Moyur's home.

[7] We adopt the judge's finding that McKinney's statement constitutes a threat of job loss, thereby violating Sec. 8(a)(1).

told him that he would be monitoring how fast Gibson worked.

In preparing the press to run the order, Bartee and Moyur followed instructions contained on a factory card and print code. The print code sets forth the printing specifications for the box to be manufactured, including the size and placement of any printing on the panels. Once the order was set up, Bartee and Moyur ran a test sheet and checked it against the information on the factory card and print code. Both concluded that the test sheet accurately conformed to the specifications. Gibson also checked the order and, on confirming that it was correct, authorized the run of the order.

With approximately 1000 pieces remaining to print, Quality Control Manager Kris Eggleston notified Bartee and Gibson that the order had been printed with the legal phrase in the wrong place. Later that day, all three employees were called in to a meeting with President Warren Reuther, Chuck and John Reuther, and Randy McKinney. Warren Reuther showed the employees the erroneously printed box which had the legal phrase to the side of the logo, and the print code which specified the placement of the legal phrase below the logo. He then asked the employees what was wrong with the finished box as compared to the print code he was holding. Moyur acknowledged that the printed box did not conform to the print code, and stated that the dies would not fit in the panel in accordance with the print code. Indeed, the Respondent admits that the print code for this order was erroneously made up by its sales department and left at the press for the employees to run. Evidently, all three employees missed the error in the print code when they checked the sample sheet against the printing specifications.

The following day, Gibson, Bartee, and Moyur were discharged. Warren Reuther told the employees that he failed to understand how the employees could make this mistake and that the error cost him money. Moyur stated that he could not understand how Reuther could discharge him after 5-1/2 years, and that it was no wonder the employees wanted a union. Warren Reuther, despite his knowledge of the union drive, stated that he did not know anything about a union.

We find that the General Counsel established a strong prima facie case that the union activity of Moyur and Bartee was a motivating factor in the Respondent's decision to discharge them on October 24. Immediately prior to October 24, Bartee and Moyur openly supported the Union and handbilled at the front gate of the Respondent's plant. The Respondent clearly had knowledge of their union activities. Further, we find that the Respondent exhibited antiunion animus by specifically threatening Moyur and Bartee with loss of their jobs for supporting the Union, by creating the impression among employees that their union activities were under surveillance, and by stating that Bartee was ''walking a thin line with his job'' because he started the union ''stuff.''

We also find that the General Counsel established a prima facie case that the Respondent discharged Gibson, who had not openly supported the Union, in an effort to cover up its discriminatory discharge of Bartee and Moyur. The Board has held that, in the context of a union organizing drive, the discharge of a neutral employee in order to facilitate or cover up discriminatory conduct against a known union supporter is violative of Section 8(a)(3) and (1) of the Act. *Dawson Carbide Industries*, 273 NLRB 382, 389 (1984), enfd. 782 F.2d 64 (6th Cir. 1986). Here, the Respondent would have had no justification for not terminating Gibson along with the two known union supporters for the printing error in which all were involved. Thus, we find that the General Counsel has shown that the protected conduct of Moyur and Bartee was a motivating factor in the Respondent's decision to discharge Gibson. Under the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the burden shifts to the Respondent to demonstrate that it would have discharged Bartee, Moyur and Gibson even in the absence of the employees' union activities. The Respondent contends that it discharged the three employees because of their intentional or gross misconduct in failing to detect an erroneous print code,[8] not consulting higher management for directions, and running the erroneous print on an order of 5500 cartons. The Respondent concedes that from time to time, the sales department prepares a print code which cannot be printed properly once it reaches a machine. The Respondent contends, however, that the burden to catch these problems falls on the machine operators. The Respondent maintains that the October 23 printing error cost it $5700, and that it had never before sustained a manufacturing error of this magnitude.

We agree with the judge that the mistake was fairly attributable to both management and the alleged discriminatees. The boxes requested had never been manufactured by the Respondent before and required

[8] In support of its assertion that the employees intentionally failed to detect the erroneous print code, the Respondent argues that Gibson and Moyur subsequently admitted in their applications for unemployment compensation that the reason for their discharge was that the three employees had ''missed the error'' when they set up the press. Although the employees admitted that they mistakenly allowed the order to run using an erroneous print code, we do not find that this admission provides a basis for the Respondent's assertion that the employees' conduct was ''intentional'' or ''grossly negligent.'' To the contrary, the employees credibly testified that they checked the sample sheet to the print code and believed, although perhaps mistakenly, that the sample sheet conformed to the print code specifications.

the use of a new print code. Although new orders generally have a white slip attached to the factory card to alert the workers that it is a new order, the Digitron print code did not have a white slip attached. Further, it is undisputed that the print code given to the employees was incorrect and resulted in the manufacture of the misprinted cartons. The employees credibly testified that they ran the order after checking the sample sheet to the print code. Although the employees may have erred in their belief that the sample sheet conformed to the print-code specifications, the Respondent has not shown that it reasonably believed that the employees' error was intentional or grossly negligent.

The record shows that the Respondent's sales department is responsible for making up factory cards and print codes in accordance with factory specifications. Sales Manager Dennis Reuther testified that the person in the sales department who drew up the print code in question was not aware that it would not fit on the panel of the carton ordered. This, he said, was an unusual oversight on the part of the sales department. Nonetheless, despite the Respondent's admission that the sales department committed an error, and despite the Respondent's alleged concern over the magnitude of this error, Supervisor McKinney testified that no one in the sales department was investigated or disciplined.

The great disparity in the Respondent's treatment of the employees of the two departments responsible for the manufacture of the misprinted boxes (discharging the press department employees while not even warning the sales department employees) strongly suggests that it was not the printing error that motivated the discharges. Rather, it appears that the Respondent seized on the mistake as a pretext to ''get'' Moyur and Bartee, just as it had predicted it would do less than a week earlier.

We also find it significant that although the Respondent has issued written warnings for printing errors in the past,[9] it had never before discharged employees for this conduct. Although the Respondent argues that discharge was warranted here because of the magnitude of the error, it failed to establish that the sales price of mistaken orders has been a determinative factor in deciding the type of discipline for these errors. Nor did the Respondent present evidence of any company policy calling for the immediate discharge of employees who mistakenly run orders using erroneous print codes. Further, the record shows that Bartee, Moyur, and Gibson had not previously received any warnings for this type of conduct. Indeed, the Respondent admitted that it had no problem with any of these employees' work records prior to the October 23 incident.

Based on the foregoing, we find that the Respondent failed to demonstrate by a preponderance of the evidence that employees Gibson, Bartee, and Moyur would have been discharged even without the employees' protected conduct. Accordingly, we find that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging these employees because of their union activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Bay Corrugated Container, Inc., Monroe, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(e) and reletter the subsequent paragraphs.

''(e) Remove from its files any reference to the unlawful demotion and discharges and notify the employees in writing that this has been done and that the unlawful demotion and discharges will not be used against them in any way.''

2. Substitute the following for the new paragraph 2(h).

''(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with loss of jobs if they support or select the Union as their bargaining representative.

[9] In sec. III,F, par. 41, of his decision, the judge incorrectly stated that employee Larry Keck testified that he ran an order using the wrong dies, when, in fact, Rick Bartee testified as to Keck's printing error.

WE WILL NOT create the impression among our employees that their concerted or union organizing activities are under surveillance by us.

WE WILL NOT discourage membership in or activities on behalf of Amalgamated Clothing and Textile Workers Union, Chicago and Central States Joint Board, AFL–CIO–CLC, or any other labor organization, by demoting and/or discharging our employees, or otherwise discriminating against them in any like or related manner, with respect to their tenure of employment or any term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Adam Gibson, Donald Moyur, and Rick Bartee immediate and full reinstatement to their former positions as of October 24, 1990, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL offer Daniel Russell immediate and full reinstatement to his former position as press operator as of December 18, 1990, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of our discrimination against him, with interest.

WE WILL remove from our files any reference to the demotion and discharges of the above-named persons, and notify each of them in writing that this has been done and that the demotion and discharges will not be used against them in any way.

BAY CORRUGATED CONTAINER, INC.

Tinamirae Pappas, Esq. and *George M. Messrey, Esq.*, for the General Counsel.

Craig S. Schwartz, Esq. (McDonald and Goren, P.C.), of Birmingham, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. Charges were filed on November 1 and December 27, 1990 and February 21, 1991, respectively, by Amalgamated Clothing and Textile Clothing Workers Union, Chicago and Central States Joint Board, AFL–CIO–CLC (the Union or the Charging Party) against Bay Corrugated Container, Inc. (the Respondent).

On December 5, 1990, and February 8, 1991, respectively, the Regional Director for Region 7 issued a complaint against Respondent and on February 11, 1991, the Regional Director issued an order consolidating the complaints in Cases 7–CA–31177 and 7–CA–31342. On March 29, 1991, the Regional Director issued a second order consolidating Cases 7–CA–31177, 7–CA–31342, and 7–CA–31584 against the Respondent.

In essence, the second order consolidating the complaints alleged that Respondent among other things created among its employees, the impression of surveillance of their union activities, and that Respondent threatened employees with loss of jobs, thereby interfering with, restraining, and coercing employees in the exercise of their protected Section 7 rights, in violation of Section 8(a)(1) of the Act; and that by discharging employees and demoting another employee the Respondent has discriminated against its employees in violation of Section 8(a)(1) and (3) of the Act.

On December 18, 1990, February 21 and April 11, 1991, the Respondent filed answers to the consolidated complaint, denying the allegations set forth in the respective complaints consolidated herein.

The hearing in the above matter was held before me in Detroit, Michigan, on October 15–18, 1991. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record in this case, including my observation of the demeanor of the witnesses, and my consideration of the briefs filed by respective counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The record shows that Respondent is, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the State of Ohio.

Also, at all times material, Respondent has maintained its principal office and place of business at 1655 W. 7th Street, Monroe, Michigan (the Monroe plant) where it is, and has been at all times material, engaged in the manufacture and nonretail sale and distribution of corrugated containers and related products.

At all times material, Respondent, during the course and conduct of its business operations realized gross revenues in excess of $500,000 and manufactured, sold, and distributed at its Monroe facility products valued in excess of $50,000, which products were shipped from the facility directly to points located outside the State of Michigan.

The complaint alleges, the Respondent admits, and I find that Respondent is now and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that at all times material the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Information*

At its plant in Monroe, Michigan, Respondent is engaged in the manufacture and nonretail sale and distribution of corrugated containers (cartons) and related products. The final step in the production of one of its containers is processed

on the Ward-F press manned by three workers called a production controller, a press assistant, and an operator.

In late September or early October 1990, Respondent's employees engaged in union organizational activity. In the latter part of October Respondent assigned two well-known union supporters and another employee to run a rush order on the Ward-F press. The factory card and print code for the order was erroneously made up by management and placed at the press for the assigned employees to run. All three workers on the press are supposed to check the order for accuracy, which they said they did, before running the order.

Four thousand cartons of the order had been run before a member of management saw the error and reported the three employees who were discharged for running the order without detecting the error. The General Counsel alleged the employees were discharged for their union activity and Respondent contends the employees were discharged for cause, negligence.

The question presented for determination is whether the General Counsel has established a prima facie case that the discharge of the three employees and one other employee later discharged, was motivated by their union activity, and whether they would have been discharged by Respondent even if they were not engaged in union activity.

At all times material, the following named persons occupied the positions set opposite their respective names, and have been supervisors of Respondent, within the meaning of Section 2(11) of the Act, and its agents within the meaning of Section 2(13) of the Act:

Warren Reuther	President
Richard (Dick) Tangeman	Executive Vice President
Chuck Reuther	Production Vice President and Plant Manager
Randall McKinney	Assistant Plant Manager and Superintendent
Rich Williams	Personnel Director
Dennis Reuther	Director of Purchasing and Sales
Kris Eggleston	Quality Control Manager
John Reuther	Vice President of Data Processing[1]

B. *Employees' Union Organizing Activities and Respondent's Reactions*

The uncontroverted and credited evidence of record shows that alleged discriminatee Ricky (Rick) Bartee was hired by Respondent in January 1987. Bartee was working as a press operator when he was discharged October 24, 1990. The record further shows that some of Respondent's employees became interested in union representation in late September 1990.[2] On the inquiry of Ricky Bartee, a union representative visited his home on October 10 and Bartee signed a union authorization card.

Bartee had previously talked to alleged discriminatee Donald Moyur about the Union. Moyur, who has been employed by Respondent since October 1984, signed a union authorization card on October 10.

Press operator Daniel Russell has been in Respondent's employ since May 1987. He attended the union meeting at Bartee's house and also signed a union authorization card on that date (October 10).

Production Controller Adam Gibson was visited at his home by union representatives on a Saturday in early October. Gibson told the representatives he was not interested and had nothing to say to them. When they left he called Chuck Reuther and informed him that he had been visited at his home by union representatives. Chuck Reuther said, ''I guess they're not going to let this union thing die.'' Manager Chuck Reuther acknowledged that during the first week of October, Adam Gibson called him and informed him that he had been visited by a union representative.

Bartee had previously talked to alleged discriminatee Donald Moyur about the Union. Moyur, who has been in Respondent's employ since October 1984, signed a union authorization card on October 10, 1990. Daniel Russell, a press operator, has been in Respondent's employ since May 1987.

Other union activities in which Moyur, Bartee, and Russell engaged included:

1. Don Moyur

Visiting employees in their homes, discussing the Union, and soliciting their signature on a union authorization card.

Distributing union cards and leaflets to employees with Rick Bartee and union representatives in the mornings at the plant's gate between October 12–15, and after his discharge on October 24. On one occasion after distributing leaflets at the gate, Moyur entered the back door of the plant where Managers Rich Williams, John Reuther, and Dick Tangeman were present. Manager John Reuther asked Moyur how was everything going at the gate of the plant.

2. Rick Bartee

During the first 2 weeks in October, Bartee distributed union cards and also passed out union leaflets at the plant's front gate. While leafleting at the gate between October 15–20, Managers John, Chuck, and Warren Reuther drove out and reentered the gate, passing by himself and other leafleters 15 feet away.

Bartee held union meetings at his home.

3. Daniel Russell

In early October, Bartee informed him about a union meeting held at Bartee's home. On the same day the union meeting was scheduled, Manager Dick Tangeman called a meeting of employees and told them he knew a union meeting was scheduled for that afternoon. Russell's testimony in this regard is corroborated by mini-flex operator, Edith Sisson, who testified she was present at the meeting and heard Tangeman tell the employees he had heard about the union meeting that evening; that he knew where and when it was being held; that he was no professional on unions but told them they would have fines, assessments, and union dues. Sisson said she does not remember Tangeman having a paper before him or reading from a paper as he spoke.

Russell attended four or five union meetings during October and December. Distributed union leaflets after the 3:30 shift at the plant's gate. While so engaged with Bartee and Moyur on December 13, Manager John Reuther drove out of

[1] The facts set forth above are not in conflict in the record.

[2] All dates herein refer to the year 1990 unless otherwise specified.

the gate, turned around, and drove right back in. Almost immediately thereafter, Respondent's vice president, Warren Reuther, Personnel Director Rich Williams, and another person whom Russell could not see, drove out of the gate, passing himself and the other leafleters, turned around, and reentered the gate. While leafleting on another occasion, Manager John Reuther and his wife drove out of the gate, passing by himself and the other leafleters.

Russell visited homes of employees in November informing them about the Union and soliciting their signature on an authorization card. Obtained the signature of some employees and he signed a union authorization card on October 11 (G.C. Exh. 2).

Russell wore 1 to 15 union buttons, 1 inch in diameter, on his shirt at work from October until he was discharged.

Manager Chuck Reuther acknowledged that during the first part of October 1990, alleged discriminatee Adam Gibson called him and said, ''Chuck, I wanted you to know that two union representatives just visited my home, asking me if I would be interested in joining a union or helping to start a union,'' and that I told them they were not interested in talking to me and asked them to leave my home.

Conclusions

It is particularly noted that Respondent does not deny having had knowledge of the union organizing activities of its employees during early October and November. In fact Manager Chuck Reuther acknowledged he learned about the union organizing activities of the employees in early October, when employee Adam Gibson called him at home and informed him that he had been visited at his home by union representatives. Thereafter, the record shows, Tangeman, on advice of legal counsel for Respondent, met with employees and discussed some aspects of unionization.

I therefore conclude and find on the foregoing uncontroverted evidence, that Respondent's employees commenced union organizing activities during the first week of October 1990; and that Respondent had knowledge of their organizing activities during that same week.

C. *Respondent's Knowledge of Employees Involved in Organizing Activities*

Production Controller Adam Gibson testified that sometime in October he went to Manager Chuck Reuther's office to discuss a problem he was having with employee Rick Bartee. Manager Reuther said:

> *Rick Bartee was the one heading all this union organizing and that he couldn't understand why, why Rick had, was doing this because the company had done so much for him. . . . Warren had done so much for him . . . that when Rick's father passed away, we gave him as much time as he needed off. . . . that when his girlfriend needed a babysitter* and was going to quit that Warren had two people in the office look for a babysitter for him and found him a babysitter. . . . when he asked for a day off they gave him that. . . . *and that Rick was kind of walking a thin line with his job, starting all this union stuff.*

According to the testimony of Manager Chuck Reuther, it was Adam Gibson who attributed the difficulty of his getting along with Rick Bartee to Bartee's union activities. While this may be true, I find the identity of who attributed Bartee's union activities to the strained relations between Gibson and Bartee insignificant. More importantly, it is noted that Manager Reuther did not deny he told Gibson, ''Rick Bartee was the one heading all this union organizing and he could not understand why, . . . since manager Warren Reuther had been so considerate with Bartee's and his girlfriend's personal problems interfering with their work schedules.''

Not only do I find Gibson's version more logical than Manager Reuther's, but I was also persuaded by the demeanor of each witness that Gibson's account was truthful and Manager Chuck Reuther's was not. Gibson's version is more consistent with a manager's concerns about an employee to whom it has extended gratuitous considerations and its disenchantment with learning that the employee was heading a union drive. The latter conduct by the employee would generally not be favored by management. For these reasons I find that Manager Chuck Reuther made the statements attributed to him by Gibson.

The evidence is also essentially uncontroverted that during October and November, employees Ricky Bartee, Donald Moyur, and Daniel Russell openly engaged in distributing union leaflets at the front gate of Respondent's plant; that on one occasion or another, either, one or a combination of Managers John, Warren and Chuck Reuther, Rich Williams, and Dick Tangeman drove out and reentered the plant's gate while the three employees and/or union representatives were distributing union leaflets.

Conclusions

Based on the foregoing evidence, I find that it may be reasonably inferred from such evidence that all of the previously identified managers in the cars which drove out and back into the gate of the plant, were able to see, did in fact see, and recognized employees Bartee, Moyur, and Russell engaged in distributing union leaflets. In fact, on one occasion after Moyur completed distribution of leaflets at the gate and entered the plant's rear door, Manager John Reuther asked Moyur, ''How was everything going at the gate.'' The latter statement clearly constitutes probative evidence that Manager John Reuther saw Moyur engaged in distribution of union leaflets at the gate and that he wanted Moyur to know that he knew about Moyur's union activities.

I therefore further find that as early as October 15 or 16, and before October 23, Respondent had actual knowledge of the union activities of Bartee, Moyur, and Russell, having observed them engaging in distribution of union leaflets, as well as the other above-described activities, that Russell, Bartee, and Moyur were supporting the Union.

D. *Surveillance*

The only equivocal aspect of the testimonial evidence is Manager Tangeman's explanation to the testimony of several employees, including Moyur, and Edith Sisson, who is presently employed by Respondent, that he told the employees in the meeting that he knew there was a union meeting, and he knew where and when it was being held. In this regard, Manager Tangeman testified that he read word-for-word from an outline prepared by Craig Schwartz, attorney for Re-

spondent (R. Exh. 27), in which he acknowledged knowing that some union activity was in progress. The outline (R. Exh. 27) does not state that management knew where and when the union meeting was being held. However, Manager Tangeman did not specifically deny that as he looked specifically at Bartee, he told the employees he knew there was going to be a union meeting and he knew when and where the union meeting was being held.

Conclusion

It is particularly noted that the testimony of employees Donald Moyur, Ricky Bartee, Daniel Wegman, and Daniel Russell all[3] that as Tangemen looked specifically at Bartee, he said or implied, he knew the employees were having a union meeting and he knew where and when the union meeting was being held.

Thus, I find that during the company-called meeting on October 11, Manager Tangeman, while staring at employee Ricky Bartee, told the employees he knew they were having a union meeting and he knew where and when it was being held. The employees actually held a union meeting that afternoon at employee Moyur's home. By making such statements to the employees, I find that Manager Tangeman coerced and restrained the employees in the exercise of their Section 7 rights by telling them he knew they were having a union meeting, and he knew where and when it was being held. Such conduct by Respondent created the impression among the employees that their union activities were under surveillance by the Respondent, and the conduct by the Respondent is such that the employees would reasonably assume that their union activities were under surveillance by Respondent. *Schrementi Bros.*, 179 NLRB 853 (1969). By creating such an impression, the Respondent has violated Section 8(a)(1) of the Act. *Emerson Electric Co*., 287 NLRB 1065 (1988); *J. P. Stevens & Co*., 245 NLRB 198 (1979).

E. *Respondent Threatens Loss of Jobs*

Employee Donald Moyur testified that on October 19, Supervisor Randall (Randy) McKinney came to his press where he and Rick Bartee were. Moyur said he asked McKinney if he signed or did not sign a union card, what kind of guarantees did he have to keep his job. McKinney told him ''to do what he [Moyur] had to do, we'll do what we gotta do. . . . but we'll get you guys.'' Immediately thereafter he watched McKinney go directly to Chuck Reuther's office. Moyur's testimony in this regard is corroborated by Bartee. However, Randy McKinney denied he told Moyur, ''You've got to do what you've got to do, and they or we've got to do what we've got to do, but we'll getcha.'' He denied he threatened Moyur with loss of his job for supporting the Union.[4]

Conclusions

Based on the foregoing credited evidence I find that during the employees' union organizing drive, Respondent (Randy McKinney) told employees Moyur and Bartee that Respondent was going to get them if they supported the union effort. Consequently, I further find that such statement by Respondent constituted a threat of loss of jobs and therefore had a restraining and coercive effect on the protected Section 7 rights of employees, in violation of Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969); *Marines Memorial Assn*., 261 NLRB 1357, 1362 (1982).

F. *Respondent Terminated the Employment of Bartee, Moyur, and Gibson*

A composite of the essentially uncontroverted and credited evidence of record shows that a part of Respondent's manufacturing process included printing what is called a legal phrase (printed logo and legal language-labeling) on its cartons. The legal phrase is designed by Respondent after consultation with, and approval of a customer. When an order for a certain size carton is received by Respondent, the latter is obligated to print the legal phrase with the preapproved print code designed by Respondent on the specified carton size for which it was designed. If any inconsistency is encountered with the printed legal phrase varying from the print code, the workers are required to contact Supervisor Reuther who is to contact the customer to determine whether the order placer or customer will grant a variance, or Manager Dennis or Chuck Reuther will modify the print code and give the workers the go ahead to run the order. The print code for orders are generally pulled by Alice Engels, and someone, possibly the production controller places them on the clipboard at the appropriate press for the workers when they arrive at work.

The credited evidence also shows that Adam Gibson, production controller for 4 years arrived at work at 6:15 a.m. on October 23. He turned on the lights and was preparing for work. At that juncture, Manager Chuck Reuther told him there was a hot order for Digitron, a well known customer of Respondent, and he wanted Gibson to get the machines going and check orders fast, because he was not doing them fast enough; and that Chuck Reuther would be listening on the radio to assure that he was working fast enough. Gibson, as production controller, reported to the Ward-F machine to run the order for Digitron. The operator of the machine was Rick Bartee and the helper was Donald Moyur. They had al-

[3] I was persuaded by the demeanor of employees Wegman, Russell, Bartee, Moyur, and Sisson that they were testifying truthfully in this regard. I was especially persuaded by Sisson's account since she is still employed by Respondent and her account is adverse to Respondent's best interest. *Gold Standard Enterprises* 234 NLRB 618 (1978). Correspondingly, I discredit Manager Tangeman's indirect denial that he told the employees he knew where and when the union meeting was being held, because he read word-for-word from an outline prepared by counsel for Respondent. Even if Manager Tangeman read word-for-word from the outline prepared by counsel, I find that he deviated from that outline and actually told the employees he knew where and when the union meeting was being held on October 11.

[4] Although employee Donald Moyur asked Supervisor McKinney about the security of his job if he signed or did not sign a union authorization, I credit Moyur's and McKinney's account to the extent that the latter told Moyur not to worry about the job as long as he did his work. However, I discredit McKinney's denial that he told Moyur, ''Do what you've got to do and we'll do what we've got to do,'' but we or they [Respondent] will get you.'' I credit Moyur's account over McKinney's account in this regard because Moyur's version is essentially corroborated by Rick Bartee, their account is consistent with all the credited evidence of record, and because I was persuaded by the demeanor of each witness that Moyur and Bartee were telling the truth and McKinney's denial was not truthful.

ready set up the machine with the paper for 5500 cartons, and both Moyur and Bartee said they had checked the order and clip board as they are supposed to do. Gibson said he checked all the dimensions and measured the printing plate, checked the stamp and the numbers and made the test run to make sure they were correct and in accordance with the print code. Finding everything perfect, he said he put the machine into run and was called to check another machine.

While Gibson was checking another machine, Quality Control Manager Kris Eggleston, called him back to the Ward-F machine where the Digitron order was running. Eggleston showed him the print code in the card box and told him the legal phrase of the printing was in the wrong place (G.C Exh. 6). This code called for the print phrases (Ford Motor Co.) to be printed in two places at the bottom.

Donald Moyur's account essentially corroborates Gibson's account with the latter adding that he checked the factory card and the dies according to the print code, since the specifications were on both the factory card and the print code. He changed the ink, set the rolls, and set up the hopper.

Rick Bartee's account also essentially corroborates Gibson's account, with Bartee adding that he punched the dimensions on the Digitron order into the computer and setup the knives and scores, checked the print plates, and found them okay. Gibson proceeded running the order.

Quality Control Manager Kris Eggleston testified that during his random quality checks on October 23, he noted the Digitron box that was being printed did not match the print code. The print code showed the logo with the legal phrases under the logo (G.C. Exh. 6). The box being printed showed the legal phrases to the right of the logo. Nearly all except about 1000 cartons at that time remained for printing and Eggleston admitted he did not shut down or order Gibson, Bartee, or Moyur to stop running the order. He said he told Rick Bartee the code did not match the printed box and Bartee told him the legal phrases did not fit under the logo, so they moved them to the right of the logo. Bartee denied he made such a statement.

Manager Eggleston called the Production Controller Adam Gibson and showed him the problem. He said Gibson was surprised. However, Eggleston acknowledged he did not inform higher management, including Warren Reuther about the latter statements attributed to Moyur during the meeting subsequently held in the quality control room. He said he did so inform Warren Reuther the next day, October 24.

Shortly after the running of the Digitron order had been completed, Gibson, Bartee, and Moyur were called to a meeting by Manager Warren Reuther. Other persons for management present were Chuck Reuther, Kris Eggleston, and Supervisor Randy Mckinney. During the meeting Warren Reuther presented a print code, factory card and printed box of the Digitron order, and asked the workers what was wrong with the order. Moyur looked at the code and card and told him that according to the print code the dye on the box is placed to the right instead of under the logo. Manager Warren Reuther said it looks like the erroneous run was deliberately done and he directed Chuck Reuther to writeup all three of them (Gibson, Bartee, and Moyur), then he said write up only Gibson and Bartee. Warren Reuther said he could see how the order was set up wrong but could not understand how none of the three workers did not catch it. Gibson and Moyur testified that Moyur told Reuther the dies (G.C. Exh. 6) would not fit in the box panel and Reuther said that was not his decision to make. Moyur said there was such a difference between the dye he had set up and the dye Warren Reuther presented them (G.C. Exh. 6) in the called-meeting, that he could not have overlooked the error.

Warren Reuther testified he decided Respondent would contact Digitron and ascertain whether they would accept the order as erroneously ran. Both Gibson and Bartee testified without dispute that in new customer orders, a white tag is stapled to the factory card to alert the checker to consult with the supervisor to secure any different specifications before running the order. A white tag was not attached to the factory card for the order ran on October 23, nor to the one shown to Gibson and Moyur by Warren Reuther on October 23. Since Eggleston had the print code with him, Moyur testified it was not available to him at the machine to recheck it. The record establishes that the Ford Motor Company is not a new customer.

Warren Reuther further testified that Digitron had declined to accept the order of October 23 because the previous order for September was also erroneously printed. However, Manager Reuther did not present any evidence from Digitron to support his statements.

1. The October 24 discharges

On the next day, October 24, Gibson, Bartee, and Moyur were called to the office where Warren, John, and Chuck Reuther, and Manager Dick Tangeman were present. Warren Reuther told the employees he saw the printing error as a $6000 mistake resulting from pure negligence, and he had no alternative other than to discharge them. Donald Moyur said that was not a good reason for discharging them after 6 years' employment; and that it was understandable why people were trying to start a union in the plant. Warren Reuther replied he did not know anything about union organizing but he acknowledged at the hearing that was not true, because he said he had learned about the advent of the employees union organizing activity in early October while he was out of town and called the plant.

2. Question

Since Respondent here contends that neither Gibson, Bartee, nor Moyur was terminated for engaging in union organizing activities, but for cause; and that Daniel Russell was not demoted for engaging in union organizing activities, but for cause; it is clear that the issues presented for resolution of the termination of Gibson, Bartee, and Moyur, and the demotion and discharge of Russell, calls for an analysis and evaluation under the *Wright Line* doctrine. *Wright Line*, 251 NLRB 1083 (1980).

In *Wright Line* the Board held ''that in such 8(a)(3) cases, where the Respondent offers evidence of cause for the discharge, or other alleged discriminatory conduct, the General Counsel must first make a *prima facie* showing sufficient to support the inference that protected concerted conduct was a motivating factor in the employer's decision and once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the employee's protected conduct.''

Additionally, the Supreme Court in *NLRB v.Transportation Management Corp*., 462 U.S. 393 (1983), held with respect

to motive or reason for alleged discriminatory conduct, ''viewed the term 'substantial or motivating factor' as interchangeable with the phrase 'played a role.'''' In establishing a prima facie case, of course, the General Counsel must establish the existence of protected activity, knowledge of that activity by the employer, and union animus. Once the General Counsel establishes a prima facie case of unlawful conduct, the employer has ''an affirmative defense in which the employer must demonstrate by a preponderance of the evidence that the same action would have taken place even in the absence of protected conduct.'' *Roure Bertrand Dupont, Inc*., 271 NLRB 443 (1984).

Consequently, the first question raised for consideration under *Wright Line* in the instant case, is whether the General Counsel has made a prima facie showing sufficient to support the inference that the protected union organizing activity of Daniel Russell, Rick Bartee, and Donald Moyur was a motivating factor in Respondent's decision to discharge Gibson, Bartee, and Moyur on October 24, respectively, and to demote Russell on December 17 and discharge him December 18.

3. The General Counsel's evidence

Donald (Don) Moyur has been in Respondent's employ since October 1984. Moyur openly engaged in union organizing activity from early October through November 1990, and Respondent was fully aware of his personal involvement in the employees union organizing effort.

On Friday, October 19, Moyur asked Supervisor Randy McKinney what kind of guarantee he would have of keeping his job if he signed, or did not sign a union authorization card. Supervisor McKinney told Moyur ''to do what he [Moyur] had to do'' and ''we'll [management] do what we gotta do, . . . but we'll get you guys.'' After the latter conversation with Moyur, Supervisor McKinney went directly to Manager Chuck Reuther's office.

Bartee was present on or around October 19, when Moyur asked Supervisor McKinney would his job be guaranteed if he signed or did not sign a union authorization card. Bartee said McKinney replied, ''There were no guarantees and management will do what it has to do, and they will get you.'' Thereafter McKinney went directly to Manager Reuther's office.

The latter statement by Supervisor McKinney to Moyur, in the presence of Bartee constituted a threat of loss of jobs or reprisal against employees for engaging in protected union activity, in violation of Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969); *Marines' Memorial Assn*., 261 NLRB 1357, 1362 (1982).

Ricky (Rick) A. Bartee has been in Respondent's employ since January 1987 without any evidence that Respondent had not been satisfied with his performance as an employee. Bartee became engaged in union organizing activities in early October when he hosted a union organizing meeting at his home on October 10. He openly distributed union leaflets at the plant's gate, all of which organizing activities Respondent was fully aware of his involvement.

Production Controller *Adam Gibson* has been in Respondent's employ since June 1986 but he did not engage in any union activity and was not a supporter of the Union. However, subsequent to the commencement of union activities by the employees in October, Gibson attended a management meeting in which Respondent's legal counsel, Craig Schwartz, spoke about what management could and could not do. Schwartz told them ''if anyone had to discharge an employee concerning the union, make sure the company had a good reason and documentation.''

On October 23, Production Controller Gibson, press operator Bartee, and Press Assistant Moyur were given a rush order to run on the Ward-F machine for Respondent's regular customer, Digitron. Gibson was told by Manager Chuck Reuther that the order was hot and had to be done expeditiously. Bartee and Moyur sat up the Ward-F machine and all three workers said they checked the print code and found the test run alright. Gibson started the machine and running the order.

After about 4000 of the 5500 carton-order had been printed, Quality Controller Manager Eggleston informed the workers that they were running an erroneous print code. However, Eggleston did not direct the workers to stop running the order, but left the press and reported the error to higher management officials. Shortly thereafter, the workers were called into a meeting with Manager Warren Reuther, Supervisor McKinney, and other management personnel. After discussing the error with the workers, Manager Warren Reuther directed that the workers be written up. However, the next day (October 24), Manager Reuther decided to terminate the employment of Gibson, Bartee, and Moyur, allegedly for running an erroneously printed order of 5500 cartons without either worker detecting the error or consulting with management for directions.

Conclusions

I therefore find on the foregoing evidence that as of early October, Bartee and Moyur were engaged in protected union organizing activities; that Respondent had knowledge of the protected organizing activities of both Bartee and Moyur; that during the organizing activities of Bartee and Moyur, Respondent created the impression among employees that their union activities were under surveillance by Respondent; that Respondent threatened them with loss of their jobs by telling them Respondent would do what it had to do, and get them, if they signed a union authorization card; that under these circumstances, such threat of loss of jobs and creating the impression among employees that their union activities were under surveillance by Respondent constituted union animus of Respondent; that Moyur has worked for Respondent 6 years and Bartee nearly 4 years without any evidence that the employment of either worker was going to be terminated prior to the onset of their protected union organizing activities in early October; and that since Respondent terminated the employment of Bartee and Moyur between only 7 to 13 days after it learned about their union organizing activities, I find that the protected union activity of Bartee and Moyur was a motivating factor in Respondent's decision to discharge them.

Consequently, having found that Moyur and Bartee were engaged in protected union activity in early October; that Respondent had knowledge of their activity; that Respondent manifested union animus by threatening them with loss of jobs and creating the impression among them that their union activity was under surveillance; and that the protected union organizing activity of Bartee and Moyur was a motivating factor in Respondent's decision to discharge them, I further

find that the General Counsel has established the required prima facie showing sufficient to support the inference that the union activity of Moyur and Bartee was a factor in Respondent's decision to discharge them on October 24. *Wright Line*, supra.

Although Adam Gibson was not a supporter of the Union and he did not engage in any protected union organizing activity with Bartee and Moyur, it is nonetheless noted that Gibson has been in Respondent's employ over 4 years. The evidence fails to show that his employment was in any jeopardy of termination prior to the commencement of the union organizing activities of Bartee, Moyur, and other employees. Notwithstanding, Gibson's employment was terminated along with that of Bartee and Moyur, and the fact that Gibson was not involved in protected activity with them does not exonerate Respondent from its discriminatory discharge of him.

The Board has held that an employee whose employment is terminated along with known union activists in order to ''wipe the slate clean'' is also protected by Section 7 of the Act. As the Board stated:

> In the context of a union organizing drive, an Employer's discharge of uncommitted, neutral, or inactive employees in order to ''cover up'' or to facilitate discriminatory conduct against a targeted union supporting employee or to discourage employee support for the union is violative of Section 8(a)(3) of the Act.'' [*Dawson Carbide Industries*, 273 NLRB 382, 389 (1984).]

In the instant case, since the evidence fails to show that Gibson was a potential for discharge prior to the commencement of employees' union activity, I find that Respondent, in an effort to ''cover up'' or to facilitate its discriminatory discharge of Bartee and Moyur, discharged Gibson also, and by doing so, the discharge of Moyur and Bartee was therefore a motivating factor in its decision to discharge Adam Gibson. As such, I further find that the General Counsel has established a prima facie showing sufficient to support the inference that the protected union organizing conduct of Moyur and Bartee was a factor in Respondent's decision to discharge Gibson. *Dawson Carbide Industries*, supra.

Consequently, the General Counsel having established a prima facie showing sufficient to support the inference that the union activity of Moyur, Bartee, and other employees was a motivating factor in Respondent's decision to discharge Gibson, the burden now shifts to the Respondent to demonstrate by a preponderance of the evidence that Gibson would have been discharged October 24 even in the absence of the union organizing activities of Bartee, Moyur, and other employees. *Wright Line*, supra.

4. Evidence of Respondent's affirmative defense

The principal reason Respondent gave Gibson, Moyur, and Bartee for their discharge on October 24, was their negligence in failing to detect an erroneous print code, not consulting higher management for directions, and running the erroneous print on an order of 5500 cartons for its Digitron customer. Respondent contended that the approximate cost of the error was $7000 and that it had never sustained a manufacturing error of such magnitude.

However, on cross-examination of Manager Richard Tangeman about the cost of the erroneously printed cartons, which had to be shredded, he testified he did not know the cost of the loss. He said he did not know because the loss would have to be determined by a selling price less profit, less cost of destroying the cartons, and labor cost during the carrying out of both work performances. Thus, the Respondent did not produce any record of the cost of the October 23 error.

Manager Tangeman further testified that prior to 1990 Respondent did not keep records of losses due to error where the order had not been shipped to the customer. It only kept records of losses which resulted from the return of materials. However, as of November 1990, after the error loss in question, Respondent commenced keeping records of manufacturing errors whether or not the order is shipped, under the subject of ''Manufacturing Deviations.'' In any event, Respondent does not have any record and it did not present any objective evidence of the cost of the subject manufacturing error of October 23.

At the trial the parties stipulated to the admission of General Counsel's Exhibit 26, a letter from Digitron stating in essence that the latter was striving to get the Q1 rating from Ford Motor Company on the basis of a perfect product. Therefore, it expected all cartons, the printing and the packing from Respondent to be of perfect quality.

The parties further stipulated that the above letter addressed to Manager Warren Reuther was transmitted by Digitron to all of its customers in the regular course of business. The letter was faxed to Respondent after Respondent made its decision to terminate Gibson, Moyur, and Bartee on October 24. Warren Reuther had the letter circulated among all of Respondent's employees.

Manager John Reuther testified and confirmed that Employer's Exhibit 26 is evidence of an order from Digitron for the previous month, September 1990, for 3054 pieces and 6000 sheets which were erroneously printed and shipped to Digitron. However, the document does not show that the order was erroneously run. It was not established which employees prepared the September order. The evidence does not show that Digitron complained to Respondent (orally or in writing) about the error in the September order. Digitron accepted and kept the September order but when Respondent (Warren Reuther) inquired about the order erroneously printed on October 23, he said Digitron declined to accept shipment, allegedly informing Respondent about an error in the September order. No witness from Digitron was produced.

The record is replete with evidence of much confusion and conflicting testimony about how the erroneous factory card and print code originated, how they made their way to the box and clipboard at the Ward-F press and was not detected by the checking of either of the three discharged employees, while they prepared the machine and ran the order. During a routine check, quality control manager, Kris Eggleston, testified he went to the Ward-F press and discovered the error after about 4000 of the 5500 cartons had been printed. He acknowledged that after he brought the error to the attention of Chuck and Warren Reuther, he did not inform them that either Gibson, Moyur, or Bartee had told him that either had changed the print dye. Instead, he said he did not inform Manager Reuther of such admissions until the next day, October 24. Moyur denied he changed the dies in setting up the order he setup October 23. He denied he told Eggleston he changed the dies.

In this regard, Supervisor McKinney testified that when he was informed about the error on October 23, Rick Bartee told him, ''We made a mistake,'' and Don Moyur said, ''If the plates did not fit, he put them to the right.'' However, Manager Chuck Reuther testified that it was Moyur's duty to contact Gibson if the print did not fit, so that Gibson could call Manager Dennis Reuther (who has jurisdiction over the prints) for the latter to tell the workers when the print code should be changed in accordance with specifications. It is noted that McKinney's account is not corroborated and is denied by Moyur who testified the code and dies were alright when he checked them.

Manager Dennis Reuther, director of purchasing and sales for 3 years, is responsible for making up factory cards and print codes in accordance with factory specifications. Quality Controller Manager Eggleston testified that the Ward-F press prints 1000 cartons in 15 minutes and that it may be shut down by pressing a button. He said when he discovered the error after about 4000 copies had been run, he did not shut down or direct the shut down of the machine before the remaining 1000 or 1500 cartons had run.

Dennis Reuther further testified that he has never known Gibson to direct employees to change a dye, nor Moyur to change a dye without permission. This was the first time Respondent was printing an order for Digitron with directions from Digitron to use Ford Motor Company specifications, and any necessary changes would have had to be authorized by Ford. He said, ''Apparently, the person in the sales department who drew up the print code in question [G.C. Exh. 6] was not aware that it would not fit on the panel of the carton ordered.'' This he said, was an unusual oversight on the part of the sales department. Nonetheless, Supervisor McKinney said no one in the sales department was investigated or disciplined for this error in the print code because the error was in the Ford specification.

With Respect to Errors

The General Counsel presented evidence of errors committed by other employees and what, if any, discipline Respondent imposed. In this regard, Larry Keck testified he ran the wrong order with the wrong dies and Dean Falkenburg ran an order wrong and both he and Falkenburg were written up. He said he does not know of any employee who had been discharged for an error in running an order.

Former employee Daniel J. McCracken testified pursuant to subpoena and without dispute that in 1988 or 1989, he put the wrong color dye and name on an order of 7000 cartons which were returned to Respondent by the Ford Motor Company. Both he and Larry Keck misread the print color code. He and Keck were written up for a loss at a cost of $1400–$1500.

Adam Gibson has been in Respondent's employ for over 4 years and he testified that production errors were frequently made even though not of the magnitude of the October 23 order. Nonetheless, Gibson and Moyur said they could not recall any employee ever being discharged for such an error. As production controller he said he would have to go in the office once or twice a week because of errors in the print code and talk with Dennis Reuther, who would tell him what to do about the error. He did not feel he made an error on the October 23 Digitron order because he checked the order. Respondent contended Gibson stated in his application for unemployment insurance, ''he was fired because an order was ran incorrectly. . . . all three of us missed the error and we checked the print code.'' However, the latter statement is not reflected in Gibson's application (E. Exh. 16). In fact his written statement contradicts the alleged statement. He said print codes are made up by Terry Taylor and reviewed by Dennis Reuther. Moyur testified he had not been written up for an order in 2-1/2 years.

Daniel J. Wegman has been in Respondent's employ since April 1986 and worked as a production controller until he was demoted to press operator, Ward-F press. He testified Chuck Reuther assigned him to rerun the Digitron order on October 24 because Gibson, Bartee, and Moyur had been terminated, and he was the only one on the first shift who could run the Ward-F press. Supervisor McKinney showed him a factory card and print code (G.C. Exh. 6) and told him it was the order Bartee and Moyur screwed up.

Wegman said he ran a test sheet which indicated the dies would not fit in the panel. He saw the bailer bailing the cartons printed by the three discharged workers on October 23. He called Supervisor McKinney and showed him the erroneous position of the legal phrases. McKinney called Chuck Reuther who measured the dies and called Dennis Reuther, who altered the print code of the logo size from EE to FF, and placed the legal phrases to the right of the logo. Wegman said he then ran the order (R. Exh. 18). General Counsel's Exhibit 6 and Respondent's Exhbit 18 are the same code, except Respondent's Exhibit 18 has Dennis Reuther's written modification on it. It is noted however, that Respondent gave the same print code to Wegman that it contends was given to Gibson, Moyur, and Bartee, but by telling Wegman it was the order the three dischargees screwed up, Wegman was alerted of a possible irregularity. Respondent must have given Wegman the print code to try to prove something amid the controversial scenario of the October 23 error.

Conclusions

Admittedly, the evidence of the scenario of the erroneous misprinting of the October 23 Digitron order is confusing and questionable. However, in one significant respect, the evidence of the erroneously printed order is consistent in that it appears convincing that the error was occasioned by a mistake. Who is responsible for the mistake appears to be quite confusing and controversial. In a general sense, it would appear that the mistake would be fairly attributable to both management and the alleged discriminatees.

In this regard, the evidence shows that the factory card and print code were erroneously made up in the sales department under the supervision of Dennis Reuther. The print code was unusual in that it was a Digitron order using, for the first time, a Ford Motor Company logo. The factory card did not have a white slip attached to it, as is the general practice for new or unusual orders. Notwithstanding, the card and print code (G.C. Exh. 6) left the sales department and made its way to the box and clip board at the Ward-F machine on October 23, without anyone in Manager Dennis Reuther's office either knowing about it, stapling a white tag to the factory card, or informing the workers about it.

The three workers assigned to run the order (Gibson, Bartee, and Moyur) all contended each of them had checked it, said the test run on the order was okay, and they pro-

ceeded to run the order. Director of Quality Control Eggleston, who testified he makes random checks of orders in the process of running, said he happened to arrive at the Ward-F press after 4000 cartons had run and he noticed the print code error. He acknowledged he did not shut down the machine or direct the workers to shut it down for the remaining 1000 cartons to be printed. When he brought the error to the attention of Gibson, whom he said looked surprised, the latter told him when he checked the order it was correct. Moyur testified that the print code (G.C. Exh. 6) was not the print code he had setup. Bartee also testified that he had checked the order before running it and found it to be okay. When the three employees were called into conference by Manager Warren Reuther, Moyur, in response to a question by Manager Warren Reuther, was the first employee to state that the legal phrases were not in the right place.

Although Director of Quality Control Eggleston testified the three alleged discriminatees had admitted to him that they made a mistake, and that Moyur had told him he had changed the dies as they sometimes do, which Moyur denied, Eggleston acknowledged that he did not inform higher management about the alleged admission on the day of the error (October 23), but that he did inform manager Warren Reuther on the following day (October 24). However, Gibson, Bartee, and Moyur denied that either of them told Eggleston they changed the dies.[5]

Thus, when all the credited evidence is viewed in its totality, namely; that the erroneous factory card and print code (G.C. Exh. 6) was made up in, and was an oversight by, Manager Dennis Reuther's sales department; that neither Manager Dennis Reuther nor any member of his staff was investigated or disciplined about this oversight; that it was acknowledged that it was possible the print code (G.C. Exh. 6) ran by the three employees could have been a legitimate print code; that the subject print code was ordered to be used by customer Digitron for the first time; that neither the factory card nor the print code had a white slip attached to it to alert the workers that it was new or unusual, as was the Company's practice; that Manager Chuck Reuther ordered Gibson to rush the order and he would be monitoring how fast he would be working; that neither of the three workers detected anything wrong with the card and print code when they checked and later tested it; that the evidence fails to provide any motive or actual evidence that the three employees intentionally or negligently ran the order; that even when the error was discovered by management (Eggleston) he did not stop or direct the employees to stop running the remaining 1000 or 1500 cartons; that Respondent did not investigate why Eggleston did not stop the running of the order nor imposed any discipline upon him for not doing so; that the Respondent did not produce any objective evidence of the cost of the loss of the erroneously printed cartons; that neither of the three alleged discriminatees had ever been known to change a print code without obtaining appropriate permission to do so; the evidence is at best equivocal under the circumstances; and not probative that the discharged employees were responsible for the error.

Additionally when all of the above factors are considered in conjunction with the additional facts that the alleged discriminatees Bartee and Moyur had openly engaged in union activities in early October; that the Respondent knew about Moyur's and Bartee's open support for the Union; that Manager Chuck Reuther told employee Gibson that it knew Bartee was ''the one heading all this union organization,'' and that Bartee ''was kind of walking a thin line with his job starting all this union stuff;'' that Supervisor McKinney told alleged discriminatees Moyur and Bartee if they signed a union authorization card or supported the Union, Respondent would get them; that such threatening statements by Chuck Reuther and McKinney constituted union animus; that Respondent's attorney told management if it had to discharge an employee for union activity to make sure it had good reasons and documentation; that by ''good reason and documentation,'' counsel for Respondent in all probability did not mean for Respondent to assert a pretext; and that the unusual and erroneous factory card and print code (G.C. Exh. 6) job was given to Gibson, Bartee, and Moyur with explicit directions to rush the processing; and that the timing, on the very next day, October 24, 3 weeks after the commencement of the employees union activity and about only 9–12 days after Respondent knew Bartee and Moyur were supporting the Union, Respondent, without issuing any warning, suspension or offer of adjustment, discharged Gibson, Bartee, and Moyur on October 24; that Respondent's swift action was consistent with its prophecy to get them for supporting the Union; and that this was the first occasion that Respondent discharged employees for an erroneous printing, the cost of which is not established, I am not persuaded by Respondent's evidence that Respondent would have discharged the employees on October 24, absent the union activity of Moyur, Bartee, and other employees.

I therefore conclude and find on the foregoing evidence that the Respondent has failed to demonstrate by a fair preponderance of the evidence that employees Gibson, Bartee, and Moyur would have been discharged even absent the protected union activity of Moyur, Bartee, and other employees, of which fact Respondent was aware. Consequently, I find that Respondent's decision to discharge them was motivated by the employees' protected union organizing activity, and that running the order on an erroneous print code was not established to have been done intentionally or negligently by the dischargees, and was therefore, a pretext by the Respondent to camouflage its otherwise unlawful and discriminatory

[5] Since the evidence shows that Eggleston did not stop or direct the employees to shut down the press and prevent the printing of the remaining 1000 cartons, and since Eggleston is a part of management and did not so inform management about what he contended the workers admitted to him, I discredit Eggleston's account in this regard because it is not only illogical, but defies common experience. I also discredit Eggleston's account because I was persuaded by his demeanor that he was not testifying truthfully, while I was persuaded by the demeanor of Gibson, Bartee, and Moyur, that they were testifying truthfully, although they appeared to be as confounded about how the error occurred as were members of management. I do not find the credibility of the alleged discriminatees affected by the fact that Gibson stated in his application for unemployment that he, Bartee, and Moyur were fired because they made a mistake in running the order. The latter statement does not explain who was responsible for the mistake and the whole scenario of the evidence does not show who was actually responsible for the error. In fact Manager Dennis Reuther confirmed that it was possible to manufacture a print code which would print a carton like the cartons ran by the three alleged discriminatees. This being so, makes Respondent's argument untenable that the print code (G.C. Exh. 6) could not have escaped detection by the three alleged discriminatees.

discharge of them, in violation of Section 8(a)(1) and (3) of the Act. *Wright Line*, supra,

In its posthearing brief to me, Respondent cites *CEC Chardon Electrical*, 302 NLRB 106 (1991), as authority for finding that its decision to discharge Gibson, Moyur, and Bartee was for cause. However, an analysis of that decision readily reveals that it is distinguishable from the facts in the instant case. Although the employer there had knowledge of the dischargees' protected activities, unlike here, there was no union animus or unlawful conduct on the part of the employer. Here, the Respondent threatened employees with loss of jobs and created the impression among the employees that their protected activities were under surveillance, in violation of Section 8(a)(1) of the Act.

In *CEC Chardon*, both employees had received final warnings for absenteeism and the employer decided that both should be discharged after the employees tried to conceal their error, by failing to record the scrap on the routing ticket and dispose of the scrap in the box provided for it, rather than in the trash, and that such conduct was considered intolerable and a threat to the employers production. Here, neither employee had received a final warning for an act they repeated which would evidence justification for their discharge. The employees in the instant case made no effort to conceal an error about which all of them were unaware. I therefore find *CEC Chardon* inapplicable to the facts before me.

Respondent also cites *Great Western Coca Cola Bottling Co*., 256 NLRB 520 (1981), in support of its position. However, it is noted that the dischargee (Patel) there, did not look at the large chart posted across his work table listing the specified range for carbonation volume in Fanta strawberry soda. Not only did Patel not look at and comply with the specifics listed in the chart, but he also ran five 5000 cases of the soda with inconsistent and inadequate carbonation volumes.

It would appear that the inconsistent volumes indicated a lack of attention or negligence on his part. In the instant case, the evidence does not indicate any inconsistencies to suggest negligence.

Also, the evidence in *Great Western Coca Cola* failed to show that the employer had knowledge of Patel's protected activities. The absence of this element constitutes a crucial element (knowledge) of the *Wright Line* doctrine. Patel admitted he wore his union button only when he did not see his boss. There, the General Counsel failed to establish a prima facie showing under *Wright Line*, supra. Consequently, I find the facts in *Great Western Coca Cola*, supra, as well as the facts in *Monterey Distilling Co*., 255 NLRB 494 (1981), and *KHK Transportation Corp*., 262 NLRB 1481, 1486 (1982), also cited by Respondent, inapplicable to the facts in the instant case.

G. *The Termination of Daniel Russell's Employment*

On an afternoon subsequent to Thanksgiving 1990, employee Edith Sisson and Supervisor Randy McKinney were on break as Daniel Russell was leaving the plant. Russell asked Sisson whether Rick Bartee and Donald Moyur had found employment. Sisson said, ''No.'' Russell asked her had they been getting more signed union cards to expedite unionization and Sisson said, ''No, she wished they all could, but they are a few short.'' Sisson asked Supervisor McKinney did he wish to wear a union button and McKinney said, ''Give it here, I will wear it.'' He put the button on as the 3:30 p.m. buzzer went off and he left the plant. McKinney later returned the union button.

Russell reported to work on December 3 and punched into the computer. Supervisor McKinney approached him and directed him to work on the large Ward-F press that day because a worker was absent. Since the paper feeder on the machine was not operating properly, Russell said he had to lift up the heavy paper to put it into the machine. Two hours later, his back started hurting and he informed Supervisor McKinney. The latter called Manager Chuck Reuther, who asked Russell what had happened and Russell said he did not know, he just reached to hit the button and his back started hurting. The only thing to which he could attribute the pain was his earlier lifting of the paper. Manager Chuck Reuther had Russell to complete an occupational injuries form (G.C. Exh. 3) in which Russell stated he ''was not lifting anything. He just started getting a pain between his shoulder blades. . . . sharp pain in the back between the shoulder blades.'' Russell testified that Reuther did not write down the rest of his statement ''that he had been lifting things earlier.'' Thereafter, Reuther told him to go to the hospital.

Russell drove himself to the hospital and was examined by a Dr. Shaw, who told him he had an acute dorsal strain and he could return to work December 5. When Russell returned to work December 5, he worked on the minipress. However, after reaching across a stack of paper, said his back started to hurt and Supervisor McKinney and Manager Chuck Reuther sent him back to the hospital at 3:30 p.m. The same doctor told him he had reinjured his back. Russell returned to work at 6:30 a.m. December 18, punched into his computer, and went to get his headset but noticed it was not there. He asked Supervisor McKinney where was his headset, McKinney told him he would have to ask Vice President John Reuther who is in charge of headsets. However, before going to Reuther, he started to write a note to his supervisor to be off the next or the following day for physical therapy.

As he finished writing the note, Russell said Warren Reuther came to him and presented him with a wage change request form and told him, ''Sign it, you're being demoted.'' He asked Warren Reuther why was he being demoted and Reuther said Keith Higdon had more seniority and production was down. He told Reuther they were making production and the latter told him ''sign the damn thing or leave.'' Russell signed it. He said 2 weeks earlier, they were making over 3000 boxes per hour and management had a production meeting during which the production standard was raised from 3000 to 4500. After he signed the wage change request form, Reuther said he did not like the way he signed it and told him to get a better attitude. As he walked away to the press, Reuther told him his setup time was the reason he was being demoted. However, Russell said he had previously seen the setup time (production sheets) of everyone else and the others were not making setup time either.

Russell said as he walked to the helper's side of the press, Supervisor McKinney asked him could he do the job and he replied he had not been on the job for 1-1/2 years and it would take a while to get back in the swing of things. Warren Reuther said, ''If he can't do it, we will move him down to something he can do.'' Managers Warren Reuther and Rich Williams walked away. Russell gave the leave notice to McKinney but said he was upset about what had occurred

and proceeded to walk to the restroom to calm himself when Warren Reuther (15 feet away) said, ''Leave, get the hell out.'' Warren Reuther denied he made that or any other statement to Russell after he left Russell at his press.

Russell further testified that he understood Warren Reuther's order meant for him to go home so he punched out and left the plant. He called back and told the secretary, Sharon Campbell, he wanted a copy of the wage change request form he had been asked to sign. She told him to come in and pick it up. When Russell went to pick up the form, Manager Rich Williams handed it to him an he left the plant.

Russell reported to work the next day, December 19, at 6:50 a.m. and noted that his timecard was not in the rack. He walked a few feet away where Supervisor McKinney and Manager Warren Reuther were, and asked McKinney where was his timecard and Manager Reuther said I have it come with me. They went to the conference room where they were joined by Managers Dick Tangeman, Rich Williams, and John Reuther. Warren Reuther told Russell he had walked off the job the previous day. Russell denied he walked off the job but said he was ordered by Reuther to leave.

Reuther asked Manager Williams if he had told Russell to leave the job. Williams, who Russell said he saw about 70 feet away at that particular time could not have heard Reuther's directive, but Williams nevertheless replied, he did not recall Reuther directing Russell to leave. Reuther said, ''I never told you, you could leave.'' Manager Reuther asked Russell did he know what the Company's handbook said about leaving the job. Russell replied, ''Yes, I do.'' Reuther then asked him to state what it says and he said, ''If you voluntary leave without permission, you are considered quit.'' Russell said he added, ''I did not quit,'' and Reuther said, ''We considered you quit.''

Conclusions, Demotion, and Discharge

The complaint alleges that Respondent discriminatorily demoted Daniel Russell on December 18 and discriminatorily discharged him on December 19 because of his union activities. Respondent denies it discriminated against Russell in any manner and contends that Russell was demoted for business reasons; and that Russell walked off the job on December 19 without permission, and the latter's conduct constitutes a ''quit'' under the Employee's Handbook.

Although Manager Rich Williams testified he did not hear either of the Reuthers' order Russell to leave or get out, former employee Scott T. Bross testified pursuant to subpoena that he heard a stack of papers fall and Russell exclaimed, ''God damn it,'' at which time, Manager Warren Reuther waved his arm motioning Russell out, and telling him to ''get out of here, we don't need your type,'' and Russell walked out of the plant. No one testified about what caused the papers to fall. Keith Higdon who was promoted to Russell's former position testified he did not hear or see any subsequent conversation between Russell and management, after Russell left the press.

While Russell's version is essentially corroborated by Bross, Manager Warren Reuther's version is not because Manager Williams simply said he did not hear anyone from management ordering Russell to leave or to get out. Consequently, Manager Reutheer's account is not corroborated. Bearing in mind that Russell was one of the employees management saw distributing union leaflets at the plant's gate and wearing union buttons over several weeks inside the plant, I was persuaded by the demeanor of Russell and Bross that their testimony was truthful. Correspondingly, I was persuaded by the demeanor of Manager Warren Reuther under the circumstances, that his denial that he ordered Russell to leave—get out, was not truthful.

With respect to Russell's demotion on December 18, it is noted that when Russell asked Manager Warren Reuther why he demoted, the latter told him because Keith Higdon had more seniority, production was down, and so was his setup time. Russell denied his setup time was a problem and contended they (he and others) were making production.

Conclusions

It is well established by the credited evidence or record that employee Daniel Russell and other employees commenced protected union organizational activity on or about October 10; and that Respondent learned about the employees organizing activities in early October, and specifically about Russell's support for the union about mid-October. Russell also wore union buttons inside the plant until he was discharged.

It is also well established by the credited evidence or record, that while knowing about the employees' protected activities in October and November, Respondent committed acts manifesting union animus by threatening employees with loss of jobs and by creating the impression among employees that their protected activities were under surveillance by Respondent, all in violation of Section 8(a)(1) of the Act.

The evidence has also established, and it has been herein found, that Respondent discriminatorily discharged employees Gibson, Bartee, and Moyur on October 24, in violation of Section 8(a)(1) and (3) of the Act. Consequently, I further find on all of the credited evidence of record that the General Counsel has established a prima facie showing sufficient to support the inference that Russell's protected activity was a motivating factor in Respondent's decision to demote him on December 18, and discharge him on December 19. *Wright Line*, supra. Thus, the burden now shifts to Respondent to demonstrate by a preponderance of the evidence that Russell would have been demoted on December 18 and discharge on December 19, absent any protected activity on his part. *Wright Line*, supra.

Evidence of Respondent's Affirmative Defense

At the trial Respondent verified that Higdon had more seniority than Russell and it admitted that production on the minipress where Russell works was above run time standards, and close to setup time standards. Respondent's production records show that run time and setup time for employees Don Hoppe and Mark Myers were down for October, November, and December, and that neither employee was issued a verbal or written disciplinary warning. The same was true with respect to other employees during the same period of time. None of those employees were demoted. Hence, the reason Respondent gave Russell for his demotion was not true, and I find that it, and Respondent's attempted exaggeration of it at the trial, was merely a pretext to conceal any unlawful reason on which Respondent's decision to demote him was based.

At the trial Respondent contended for the first time that it demoted Russell for his poor attendance. Since Respondent now asserts a new reason for demoting Russell (attendance) which it did not give to Russell on the day of his demotion (December 18), I have serious questions about the credibility of Respondent's assertions. Moreover, when the poor attendance records of other employees are considered along with Respondent's assertion of Russell's attendance record, I am persuaded by the latter's records and the demeanor of Respondent's witnesses, that this defense too is pretextual. This conclusion is especially sound when it is also noted that other employees with poor attendance rcords were not demoted, and at most, in some cases received only a verbal or written reprimand. It is also noted that to the extent that Russell's attendance record was poor, I find that Respondent tolerated his absences for nearly the duration of his working tenure, until Russell's open union organizing activity in October, November, and December, of which fact Respondent had full knowledge. It is therefore clear, that by discharging Russell, Respondent was wiping the slate clean and ridding itself of the last principal union organizing leader.

Finally, Respondent contends it demoted Russell for its suspicion of the genuineness of Russell's workmen's compensation claim because of conflicting reports given to Respondent by Russell and his physician, Dr. Shaw. However, it is noted that Respondent never questioned Russell or inquired of his physician about any suspicions it entertained about the reports of Russell's condition and complaints prior to its demotion and discharge of Russell. The record does not show that Respondent ever requested to see a fuller report from Russell or his doctor. Consequently, I find this assertion is without reasonable foundation and unsubstantiated by the evidence, and therefore pretextual and discredited.

Based on the foregoing credited evidence and reasons, I find that Respondent has failed to demonstrate by a preonderance of the evidence that employee Daniel Russell would have been demoted by Respondent on December 18, and discharged by Respondent December 19, even absent the protected union organizing activities of Russell and other employees, of which the Respondent was fully aware. Instead, I find that Respondent's asserted reasons for demoting Russell (his setup time, his production being down, absenteeism, and questionable medical reports), and that other asserted reason for discharging him (''considered quit'' under the Employees Handbook) were pretextual, in an effort to legally justify its actions. *Wright Line*, supra.

Consequently, I conclude and find on the foregoing evidence and reasons that Respondent has failed to demonstrate by a preponderance of the evidence that it would have demoted and discharged Russell absent any protected activities on his part; and that the Respondent discriminatorily demoted Russell on December 18 and discriminatorily discharged Daniel Russell on December 19, in violation of Section 8(a)(1) and (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(1), and Section 8(a)(1) and (3) of the Act, I will recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, by threatening them with loss of jobs if they supported the Union, and by creating the impression among the employees that their protected activities were under surveillance by Respondent, in violation of Section 8(a)(1) of the Act; and that by discriminatorily demoting and discriminatorily discharging employees in violation of Section 8(a)(1) and (3) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct, and that it make the demoted employee and the discharged employees whole for any loss of earnings within the meaning of and in accord with the Board's decision in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987),[6] except as specifically modified by the wording of such recommended Order.

Because of the character of the unlawful labor practices herein found, the recommended Order will provide that Respondent cease and desist from, or in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co*., 120 F.2d 532, 536 (4th Cir. 1941).

On the basis of the above findings of fact and the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. By threatening employees with loss of jobs if they supported the union, Respondent has violated Section 8(a)(1) of the Act.

2. By creating the impression among employees that their protected organizing activities were under surveillance by the Respondent, Respondent has violated Section 8(a)(1) of the Act.

3. By discriminatorily discharging employees Adam Gibson, Donald Moyur, and Ricky Bartee on October 24, 1990, Respondent has violated Section 8(a)(1) and (3) of the Act.

4. By discriminatorily demoting Russell on December 18, 1990, and discriminatorily discharging him on December 19, 1990, Respondent has violated Section 8(a)(1) and (3) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

[6] See generally *Isis Plumbing Co*., 138 NLRB 716 (1962).

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Bay Corrugated Container, Inc., Monroe, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of jobs if the employees support or select the Union as their bargaining representative.

(b) Creating the impression among the employees that their concerted or union organizing activities are under surveillance by Respondent.

(c) Discouraging membership in or activities on behalf of Amalgamated Clothing and Textile Workers Union, Chicago and Central States Joint Board, AFL–CIO–CLC, or any other labor organization, by discharging Adam Gibson, Donald Moyur, Ricky Bartee and demoting and discharging Daniel Russell, or otherwise discriminating against employees in any like or related manner with respect to their tenure of employment or any term or condition of employment, in violation of Section 8(a)(1) and (3) of the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to recall Adam Gibson, Donald Moyur, and Ricky Bartee for immediate and full reinstatement to their former positions as of October 24, 1990, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Offer to recall Daniel Russell for immediate and full reinstatement to his former position as press operator as of December 18, 1990, or, if such position no longer exists, to a substantially equivalent position, without prejudcie to his seniority or other rights and privileges.

(c) Make whole Adam Gibson, Donald Moyur, and Ricky Bartee, from October 24, 1990, for any losses they have suffered as a result of the discrimination against them.

(d) Make Daniel Russell whole from December 18, 1990, for any losses he has suffered as a result of the discrimination against him.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at Respondent's Monroe facility, located at 1655 W. Seventh Street, Monroe, Michigan 48161, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''